IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/07/2004

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THE HON'BLE MR.JUSTICE M. THANIKACHALAM

C.R.P.P.D.NO.2656 of 2003
AND
C.M.P.NO.20064 OF 2003

L. Narayan Reddy .... Petitioner

-Vs-

1. P. Narayan Reddy
2. Padma
3. Pappi Reddy
4. Manjula
5. Chandra
6. Sreenivasa Reddy
7. Ramesh .... Respondents

Revision Petition filed under Article 227 of The Constitution of India against the order and decreetal order in I.A.No.452/2003 in O. S. No.469/1996 on the file of Subordinate Judge, Hosur dated 31.10.2003.

!For petitioner : Mr.V. Raghavachari

^For respondents : Mr.P. Mani

:ORDER

The plaintiff is the revision petitioner.

2. The revision petitioner, impleading the respondents herein as defendants, has filed a suit for Specific Performance of contract, seeking direction to the defendants to execute a sale deed in respect of some immovable properties. According to revision petitioner/ plaintiff, the first defendant had agreed to sell the suit property on his behalf and on behalf of his minor and in pursuance of the same, he had also executed a sale agreement in his favour agreeing to sell the property for a sum of Rs.1,50,000/-. It is the further case of the plaintiff/revision petitioner, as seen from paragraph 4 of the plaint that because of the suit filed by the first defendant in O.S.No.39/96

on the file of District Munsif, Hosur, he was unable to complete the sale transaction and there was some dispute. It is the further contention of the revision petitioner as seen from paragraph-8 of the plaint that because of the pendency of the suit, the plaintiff was legally prevented from filing the suit for specific performance and therefore, the suit is not barred by limitation. On the above basis, accusing the defendants, as if they have committed breach of contract, the suit was filed for specific performance in the year 1996 and the said suit is still pending.

3. The contesting defendants/respondents filed a detailed written statement informing the Court, how the suit is barred by limitation and how the plaintiff is not entitled to a decree for specific performance. On the basis of the plea and counter plea, after framing issues, the trial has been commenced and at present, P.W.1 was examined.

4. At this stage, the plaintiff has filed I.A.No.452/2003 in order to introduce certain amendments, as detailed in the petition, contending that the proposed amendment is in the nature of clarificatory statement based on subsequent to sub division of suit property as well as on the basis of subsequent withdrawal of previous suit, filed by the first defendant and therefore, in order to meet the ends of justice and to decide the case once for all finally, the proposed amendments are absolutely necessary. The contesting defendants, opposed the same on the ground that the petition filed for amendment after P.W.1 has been examined is not maintainable in view of the amended Civil Procedure Code and that the plaintiff cannot claim exemption on the basis of pendency of the previous suit, which has nothing to do with the filing of the present suit.

5. The learned Subordinate Judge, Hosur, weighing the rival contentions of the parties, scanning the previous pleadings as well as the proposed amendment, tested the same with judicial precedent, which brought to surface that the petition is not maintainable. In this view, the petition came to be dismissed on 31.10.2003, which is under challenge in this revision.

6. Heard Mr. V. Raghavachari, learned counsel for the petitioner and Mr.P. Mani, learned counsel for the respondents.

7. The learned counsel for the petitioner Mr.V. Raghavachari submits that by the proposed amendment, the plaintiff is not introducing any new case, not changing the character of the suit, including the prayer and the aim of the petition is only to clarify the existing pleadings, if the same is allowed, it would not cause any prejudice to the other side. It is the further submission of the learned counsel that the amended Civil Procedure Code relating to the provision under Or.6 R.17 could not be made applicable to this case, since the amended provision is not made applicable to the existing pleadings viz., the suits filed prior to 1.7.2002. Unfortunately, without considering these aspects, the trial Court committed an error, in dismissing the application, which error should be rectified by this Court.

8. The learned counsel for the respondents/defendants, opposing the above contentions, submits that the amended provision is applicable even to

the present case and not only that, by the proposed amendment, the plaintiff wants to claim exemption from the Limitation Act, which could not be allowed to be raised. If allowed, much prejudice would be caused to the defendants.

9. Or.6 R.17 C.P.C has been amended under Act 22 of 2002 with effect from 1.7.2002, which reads as follows:

"The Court may at any stage of the proceedings allow either party to alter his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial".

10. Though the first part of the Section gives wide power to the Court to allow the amendment of pleadings at any stage of proceedings, which are necessary for the purpose of determining the real questions in controversy between the litigants, the proviso restricts the liberal view to certain extent, since it commands no application for amendment shall be allowed after the trial has been commenced. Here also, it is not a blanket ban refusing the amendment after the trial has been commenced and the same is subject to further liberalisation, if the parties, who moved the Court for amendment, had shown that in spite of due diligence, it was not within his reach to raise the matter, which he is now raising, before the commencement of the trial, then the Court should be so liberal in allowing the amendment in order to meet the

ends of justice, deciding and determining the question, in controversy, between the parties, thereby avoiding multiplicity of proceedings or driving the parties to commence subsequent litigation.

11. The learned counsel for the respondent, in support of his contentions that amendment of plaint is not permissible, after coming into force of Code of Civil Procedure Amendment Act, 2002, relied on a decision of this Court in P. Subba Naicker vs Veluchamy Naicker and three Others (2004(2) CTC 742 , wherein Lordship P. SATHASIVAM,J held as follows:
"After Amendment Act came into force no amendment of Plaint can be allowed after commencement of trial unless Court comes to conclusion that inspite of due diligence plaintiff could not have raised plea before commencement of trial".

12. This ratio could be made applicable in a case, which was filed only after 1.7.2002, which could be seen from Sec.16 of Act 22 of 200 2 . In P. Subba Naicker's case, it is not clear whether the suit was filed before 1.7.2002 or after 1.7.2002. Therefore, as such, this ruling cannot be made applicable to all the cases and it would depend upon the filing of the suit.

Sec.16 (2)(b) of Act 22 of 2002 reads as follows:

(b) the provisions of rules 5, 15,17 and 18 of Order VI of the first Schedule as omitted or, as the case may be, inserted or substituted by section 16 of the Code of Civil Procedure (Amendment) Act, 19 99 and by section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and Section 7 of this Act.

13. Thus it is seen, some of the provisions omitted in Or.6, some of the provisions inserted or substituted by Amended Civil Procedure Code shall not apply to in respect of any pleading filed before the commencement of implementing the amended provisions. In this case, admittedly, the suit was filed in the year 1996 i.e., before the amendments introduced under Act 22 of 2002 and in this view of the matter, I am of the considered opinion the proviso cannot be an impediment or bar in allowing the amendment application, if it otherwise deserves on merit to be allowed, on the basis that the trial has been commenced and therefore, no amendment shall be allowed after commencement of the trial. Next we have to see whether the proposed amendment deserves acceptance.

14. It is the submission of the learned counsel for the revision petitioner that no prejudice would be caused to the respondents, if the proposed amendment is allowed, which aids to decide the case on merit giving clarification to the existing pleading and in support of the above contention, aid is sought from FRITIZ T.M. CLEMENT AND ANOTHER VS SUDHAKARAN NADAR AND ANOTHER (2002)3 SCC 605 and PUNJAB NATIONAL BANK VS INDIAN BANK AND ANOTHER (2003)6 SCC 79.

In the first case, an ill drafted plaint with cryptic and inaccurate averments sought to be amended by way of elaboration and clarification, that is even before the commencement of the trial, not introducing any new case or fresh cause of action. Considering the facts and circumstances of the case, the Apex Court has held as follows:

"The original plaint, though set out the main basis of the suit, was rather cryptic and lacking in relevant particulars. There was a bare reference to the agreement which was the foundation for the appellant's claim. Not only that, the basic terms of the agreement were not accurately stated in the original plaint. Even the specific date of the agreement had not been mentioned; instead only the year was mentioned. Thus sufficient care had not been taken in drafting the plaint. The party shall not be penalised for that reason".

In this view, the proposed amendment, which was refused by the Courts below, was allowed by the Apex Court.

15. In the Punjab National Bank case , the Apex Court has observed, if the amendment sought to be made is in the nature of clarification of pre-existing averments in the plaint, that should be allowed. The relevant

portion reads as follows:
" Reading the plaint as a whole, it is found that although in some paragraphs and in the caption of the cause-title of the suit, the rupee equivalent of the amount in USD has been indicated first and in dollars later as well as in prayers (i) and (interim injunction); that would not mean that there is no claim and prayer for decree in terms of dollars at all. However, there is some vagueness in the plaintiff' s case regarding the claim and decree in terms of dollars or rupees but there can always be an amendment of the pleading to clear such confusions and vagueness. The present case is not one in which something fresh or new is sought to be added. The claim in terms of dollars has been made in different paragraphs of the plaint as well as in clause (v) of the prayer clause, no new relief is sought to be added, only the part claiming the relief in rupee terms is sought to be deleted and a clear prayer for a decree in dollars would resultantly remain there by deletion of the rupee component. Therefore, no question of introducing any new case, a new cause of action or seeking new relief which may be barred by limitation arises. It is an amendment more clarificatory in nature.

16. Having the above principles in mind, we have to see whether the proposed amendment is in the nature of clarification or whether it introduces a new case, destroying the basic structure, on which a suit has already been filed. To understand the nature of the amendment, we have to see the previous pleadings as well as the proposed amendment.

17. In paragraph-6 of the plaint, the plaintiff has stated about the suit filed by the first defendant, which was pending before the District Munsif Court, Hosur as O.S.No.39/96, though the suit was filed elsewhere in the year 1989, later transferred to Hosur District Munsif Court and re-numbered as O.S.No.39/96. The plaint further reads that in view of the assurance given by the first defendant that he will withdraw the suit, the plaintiff was waiting patiently for an year in O.S.No.39/96. Paragraph-8 of the plaint gives certain details how the suit is not barred by limitation though the dates were not given claiming exclusion from the Limitation Act. Only to improve those averments, which are already in existence by way of clarification, the petition is filed seeking amendments. In the affidavit also, the plaintiff has stated that he came to know about the withdrawal of the suit later and the date should be included. It is the further case of the plaintiff that after the suit was filed, the patta was transferred, suit survey number was subdivided. In this view, the plaintiff wants to amend the description of the property as well as add some more averments at the end of paragraph-8, which says the suit is not barred by Limitation.

18. The subject matter of the suit in the original plaint is dry land bearing S.No.13/2A, Dry Ext.Hec.0.76.5, for the above extent, boundary also was given. It seems sub division was taken place and therefore, the plaintiff wants to have the sub division as 13/2A1 and 13/2 A2, further clarifying that the suit property is in 13/2A1 measuring 0 .59.5 Hec. In my considered opinion, there is no change of property, since such property is already identified with old Survey Number, giving boundary also. In this view, by the proposed amendment, there is no change in the subject matter of the suit and by allowing the same, the parties would stand benefited in reaching a final

conclusion.

19. As faras the second amendment is concerned, it reads as follows:
"The O.S.No.39/96 was filed in Sub Court, Krishnagiri on 7.12.89 (O. S.No.222/89) Sub Court, Krishnagiri) and the petition for withdrawal was ordered on 14.10.1996 by the District Munsif, Hosur, though wrong mentioned as 17.10.96 in the suit register, any how the period commencing from 7.10.89 to 14.10.1996 i.e., a period of 6 years 10 months and 7 days is to be excluded, and infact the 7th defendant filed a revision against the orders in I.A.No.1411/96 and the High Court, dismissed the revision on 25.4.97. So the period commencing from 7.12 .1989 to 14.10.1996 is to be excluded, because the plaintiff was prosecuting the case under the bonafide impression that the vendor will establish his title for the property, and so under Section 14 of the Limitation Act, the period of 6 years 10 months and 7 days is to be excluded, and in fact to show the bonafide of the plaintiff, the present suit was filed even before withdrawal petition is ordered and so the question of limitation does not arise, because even the 1st defendant himself has not chosen to claim the period of 11 months mentioned in the agreement as time is essence of contract, because he himself has wanted the document to be completed on 15.12.1989, after expiry of 11

months. So the present suit filed is in time for the reasons stated above, and in the earlier paras.

20. As aforementioned, the plaintiff claimed exemption from the Limitation Act and explained how the suit is in time and in this view, the above averment reproduced is in the nature of clarification, as held by the Apex Court and therefore, by allowing this proposed amendment, no prejudice would be caused and an opportunity must be given to the plaintiff to agitate his case in detail, clarifying the existing pleading and for that purpose, in my considered opinion, revision deserves acceptance. Unfortunately, the trial Court, without approaching the case from its proper perspective, dismissed the amendment application, as if not maintainable and if allowed, it would cause prejudice, erroneously, which, therefore, deserves setting aside.

21. In the result, revision is allowed by setting aside the order of the trial Court in I.A.No. 452/2003 and allowing the same, thereby permitting the plaintiff to amend the plaint, as prayed for. No costs. Consequently, the connected C.M.P is closed.

22. Since the suit is part heard and of the year 1996, the trial Court is directed to dispose of the suit within three months from the date of receipt of a copy of this order. If the records are available here, Registry is directed to send back the records also forthwith along with the Judgment.

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Index:yes
Website:yes

To

The Subordinate Judge, Hosur